

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

JAY JOHANNIGMAN, MD,
3428 Duncan Avenue
Cincinnati, Ohio 45208

Plaintiff,

v.

**UNIVERSITY OF CINCINNATI
PHYSICIANS, INC.
dba UC PHYSICIANS,**
c/o Lori Mackey
222 Piedmont #1200
Cincinnati, OH 45219

UNIVERSITY OF CINCINNATI,
c/o Lori Ross
2618 McMicken Circle, Suite 650
Cincinnati, OH 45221

and

UC HEALTH, LLC,
c/o GH&R Business Services, Inc.
312 Walnut Street, Suite 1800
Cincinnati, OH 45202

Defendants.

Case No. 1:19-cv-00280
Judge Michael R. Barrett

**AMENDED COMPLAINT
WITH JURY DEMAND
ENDORSED HEREON**

PARTIES

1. Plaintiff Jay Johannigman, MD, is a resident of the state of Ohio.
2. Defendant University of Cincinnati Physicians, Inc. (“UCP”) is a domestic non-profit corporation. UCP employs Dr. Johannigman to practice at medical facilities run by Defendant UC Health, including the University of Cincinnati Medical Center (“UCMC”). Relevant leadership of UCP includes Dr. Andrew Filak (President and Chairman), Sheila

McCormick (Director of Human Resources), Dr. Myles Pensak (CEO of UCP, as well as Chair of the Department of Otolaryngology at UC College of Medicine).

3. Defendant University of Cincinnati (“UC”) is an educational institution. It employs Plaintiff as a faculty member in the College of Medicine. Some of the relevant leadership of UC overlaps with UCP, including Dr. Filak. In addition to serving in the role of President and Chairman of UCP, Dr. Filak is the Interim Dean of the College of Medicine. Other leaders relevant to this Complaint include Dr. Michael Edwards (former Chair of the Department of Surgery), Dr. Jeffrey Sussman (current Chair of the Department of Surgery), Dr. Timothy Pritts (Chief of the Section of General Surgery), J. Taliesin “Tal” Richards (Executive Director of Business Affairs of the Department of Surgery and HR Liaison for UC Health employees within the Department of Surgery), Dr. Alex Lentsch (Senior Associate Dean for Faculty Affairs and Development), and Heather Cox (Executive Director of HR and Faculty Affairs).

4. Defendant UC Health, LLC is a domestic not-for-profit corporation. UC Health runs the medical facilities where Dr. Johannigman practices, including UCMC, of which Dr. Jonathan Moulton is Chief-of-Staff. It also employs the administrative staff that assist the Department of Surgery at UC. Physicians employed by UCP to work at UC Health facilities are subject to certain employment policies of UC Health. UC Health leadership includes CEO Dr. Richard Lofgren and CMO Dr. Evaline Alessandrini.

NATURE OF ACTION

5. This action is filed by Plaintiff Jay Johannigman, MD, against Defendants for discrimination on the basis of sex and military status in violation of Ohio Rev. Code. Ch. 4112, discrimination and failure to reemploy in violation of the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), and defamation in violation of Ohio common law.

6. Dr. Johannigman, a renowned trauma surgeon, has been employed by Defendants since 1994. For all of his 25-year career with Defendants, he has worked at UCMC, the facility formerly known as University Hospital.

7. Dr. Johannigman has served in the military since 1990, and continues to serve in the U.S. Army Reserves.

8. In November 2017, while deployed in Afghanistan, Defendants indefinitely removed Dr. Johannigman from trauma call at UCMC, one of his core job responsibilities.

9. After a male resident complained about him in May 2018, Defendants immediately stripped Dr. Johannigman of all clinical duties.

10. Dr. Jonathan Moulton, Chief-of-Staff at UCMC, considered the complaint against Dr. Johannigman and found that the alleged misconduct did not warrant any suspension of privileges at UCMC.

11. Defendants nonetheless required Dr. Johannigman to undergo a psychological evaluation to determine whether he was fit to work with residents and in the UCMC setting generally. The psychologist cleared Dr. Johannigman to work, but Defendants still refused to reinstate him at UCMC.

12. Dr. Johannigman consulted HR and his supervisors within UCP and UC to seek a path of remediation or a performance improvement plan. Defendants have refused to provide one.

13. Defendants have not identified any other incident of alleged misconduct on the part of Dr. Johannigman.

14. To date, Defendants have denied Dr. Johannigman any opportunity to develop a plan of remediation or to return to practice at UCMC.

15. In contrast to Defendants' treatment of Dr. Johannigman, after several female UC Health employees complained that non-military physicians in the Department of Surgery were creating a hostile work environment, Defendants did nothing to correct or prevent their misconduct for months. Even after filing Title IX complaints, the women were forced to continue working side-by-side their alleged sexual harassers.

16. One of the accused physicians, Dr. Michael Edwards, was Dr. Johannigman's supervisor at the time. When Dr. Edwards found out that Dr. Johannigman had voiced his support of the women, he said that that would be Dr. Johannigman's "last mistake."

17. Defendants continue to prevent Dr. Johannigman from working at UCMC, the only Level I trauma center in the region, which he had developed and led since 2001.

18. As part of this lawsuit, Dr. Johannigman seeks injunctive relief to compel Defendants to fully restore his employment.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 1331 as Plaintiffs' Claims IV and V arise under the laws of the United States, namely, the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), 38 U.S.C § 4301, *et seq.*

20. This Court has supplemental jurisdiction over the remaining state law claims, Counts I, II, III, and VI, pursuant to 28 U.S.C. § 1367 on the grounds that they are so related to the federal claims over which this Court has original jurisdiction that they form part of the same case or controversy.

21. Venue is proper in the Southern District of Ohio, Western Division pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to these claims occurred in this District, and because Defendants reside in this District.

FACTUAL ALLEGATIONS

22. Plaintiff Jay Johannigman, MD, is a renowned trauma surgeon.

23. Dr. Johannigman served on active duty in the U.S. Air Force from 1990 to 1994.

24. Dr. Johannigman has been employed by Defendants UC and UCP since 1994.

25. Dr. Johannigman continued to serve as a member of the U.S. Air Force Reserves from 1994 to 2017. In 2017, Dr. Johannigman transitioned from the U.S. Air Force Reserves to the U.S. Army Reserves.

26. Throughout the course of Dr. Johannigman's military service, he has completed seven combat deployments to the theaters of Iraq and Afghanistan, and has received numerous commendations and combat medals, including the Bronze Star, the Meritorious Service medal, and the Army Commendation Medal.

27. Dr. Johannigman currently serves as a Professor of Surgery and the Director of the UC Institute for Military Medicine.

28. In his role as a Professor at UC, Dr. Johannigman has won numerous teaching awards, including multiple Silver Apple Teaching Awards.

29. Among his recent teaching evaluations, residents have noted that Dr. Johannigman is an “Excellent educator . . . Teaches physiology better than anyone else on faculty,” and rated him as “Excellent [in] resident teaching and patient care.”

30. His peers within the Department have described him as “very highly regarded by his peers, residents, and medical students,” and “very highly regarded as a teacher and a mentor” of students and residents.

31. Dr. Johannigman’s practice has included trauma surgery, surgical critical care, emergency surgery, and general surgery at UCMC.

32. Dr. Johannigman served as the Chief of the Division of Trauma, Acute Care Surgery and Critical Care within the Department of Surgery from 2001 to 2017.

33. Under Dr. Johannigman’s leadership, the Division grew from a single program with four surgeons to a Trauma system with two hospitals, seventeen surgeons, and a robust research program. As a result, Trauma Surgery at UCMC is the only Level I program in the region and has received national recognition for its role in leading advances in patient care.

34. In 2012, Dr. Johannigman led the expansion of the Trauma program by developing a Level III trauma center at Defendant UC Health’s West Chester campus. As a result of the continued expansion of the Level I trauma program at UCMC and the addition of the Level III trauma center at West Chester, UC Health’s trauma care system evaluates and cares for over 5,000 patients a year.

35. Dr. Johannigman has also been instrumental in the foundation and ongoing success of the Center for the Sustainment of Trauma and Readiness Skills (“C-STARS”), a joint program between UCMC and the U.S. Air Force. Cincinnati C-STARS is one of only five Department of Defense/Military Strategic Partnerships in the United States.

36. Dr. Johannigman's presence within the military and civilian sectors afforded UCMC the distinction of C-STARS's 2001 opening and its continued expansion.

37. C-STARS brings over twenty-five active duty military medics to provide care at UCMC as well as train members of the US Air Force's elite Critical Care Air Transport Teams.

38. The unique stature of Cincinnati C-STARS as a recognized Military/Civilian Strategic partnership has been made possible the development of a Department of Defense and military-funded research portfolio of over \$24 MM, which contributes approximately 40% of its funding to Defendant UC.

39. Dr. Johannigman stepped down as Chief of the Division in April 2017. He advised Drs. Timothy Pritts and Edwards he was planning to deploy as part of the transition of the role, renamed Chief of the Section of General Surgery, to Dr. Pritts.

40. Like Dr. Johannigman, Dr. Pritts is an employee of Defendants UC and UCP.

41. Since Dr. Pritts became Chief, he has been Dr. Johannigman's immediate supervisor.

42. Dr. Pritts ultimately reports to Dr. Andrew Filak, the Interim Dean of the College of Medicine and President/Chairman of UCP.

43. Dr. Johannigman most recently deployed to Afghanistan from August 2017 to January 2018.

44. Upon information and belief, faculty members of the College of Medicine, who are also employees of Defendant UCP, published false and injurious statements to the Sycamore Township Fire Department and the Fire Department of the City of Cincinnati

about Dr. Johannigman. Defendant falsely claimed, for example, that Dr. Johannigman had been led out of the emergency room in handcuffs.

45. While serving in Afghanistan, Dr. Johannigman continued to electronically submit his preferred six-month schedule requests, as was routine for all Division faculty members.

46. On November 14, 2017, Dr. Johannigman requested his normal call distribution for the coming six months, which included four weeks of trauma call at UCMC.

47. On November 23, 2017, Dr. Johannigman became aware through a call schedule email that Dr. Pritts had not scheduled him for any trauma call whatsoever.

48. Dr. Johannigman received no written or oral notification prior to Dr. Pritts unilaterally removing him from call.

49. This was the first time Dr. Johannigman had been removed from trauma call in his career.

50. Trauma call has typically comprised half of Dr. Johannigman's "on service" weeks.

51. In a Skype call to Dr. Johannigman in his Forward Operating Base in Afghanistan, Dr. Pritts advised Dr. Johannigman that he would be taken off trauma call until he returned from the combat zone and completed orientation to a new system that had been implemented while Dr. Johannigman was away.

52. Dr. Pritts assured Dr. Johannigman that once he had fulfilled these training and orientation requirements, he would return to call.

53. Upon information and belief, no other faculty members were required to fulfill all of the training and orientation requirements imposed on Dr. Johannigman,

including the most junior faculty members who had been employed by Defendants UC and UCP for fewer than eighteen months.

54. On November 25, 2017, Dr. Johannigman wrote a letter to Dr. Pritts in which he objected to being removed from trauma call.

55. Once Dr. Johannigman returned to Cincinnati in January 2018, he diligently fulfilled the requirements set out by Dr. Pritts. By approximately early April, he had completed the training protocols.

56. Dr. Pritts did not return Dr. Johannigman to trauma call.

57. Dr. Johannigman met with Dr. Michael Edwards, then the Chair of the Department of Surgery at UC College of Medicine, to discuss the matter. Dr. Johannigman's November 25 letter to Dr. Pritts was on Dr. Edwards' desk.

58. Dr. Edwards told Dr. Johannigman that he intended to restrict his privileges indefinitely despite Dr. Johannigman's completion of orientation and training.

59. Concurrently, in November 2017, female UC Health employees complained to Dr. Pritts, Dr. Lofgren, and UC Health HR that Dr. Edwards, Dr. Kenneth Davis, and Dr. Jason Schrager—all faculty in the Department of Surgery—mistreated and sexually harassed women in the Department.

60. The female employees advised Dr. Pritts that Dr. Davis, for example, had photographs of women cut out from Maxim magazine taped to his office door, that he regularly sent them emails with sexist, racist, pornographic, and xenophobic content, that he would frequently ask them to reach into his front pants pocket “to get a quarter,” and that he boasted in profane terms that he was so immune as a tenured professor that he could get away with sexual assault, among many other examples of sexist and sexually explicit conduct.

61. Upon receiving the women's complaints, Defendants failed to exercise reasonable care to prevent and promptly correct the hostile work environment. Instead, Dr. Pritts asked one complainant, "How do we protect Ken [Davis] and Jason [Schrager]?"

62. Dr. Johannigman opposed the above-described sexist conduct. In February 2018, he met with Tal Richards, the Executive Director of Business Affairs of the Department of Surgery and liaison with UC Health HR, to express his concerns about Dr. Edwards' gender-motivated hostility toward a female employee.

63. About one week later, Dr. Edwards met with Dr. Johannigman and told him that he had no right to challenge him, and that this was the "last mistake" he would make with him as the Department Chair.

64. Finding that they were getting nowhere with Dr. Pritts and UC Health, the female employees filed complaints through UC's Title IX office against Drs. Edwards and Davis in May 2018.

65. The complaints included a description of an incident where Dr. Edwards yelled at a female employee in January 2018, frightening and humiliating her, as well as several episodes of Dr. Edwards kissing female employees at University functions. One of the women complained that Dr. Edwards had kissed her and said, "I can do that because I know you will not Title IX me."

66. Dr. Johannigman participated in the Title IX investigations, providing a statement to the investigator and supporting the complainants.

67. During the pendency of the investigations, Defendant UC did not remove Drs. Edwards and Davis from their roles in the Department of Surgery.

68. During the pendency of the investigations, none of the Defendants removed Drs. Edwards and Davis from clinical care of patients or interfered with any of their other job duties.

69. During the pendency of the investigations, none of the Defendants removed Drs. Edwards and Davis from the employees who had filed Title IX complaints against them. Instead, the women had to continue to provide administrative support for their alleged harassers.

70. In May 2018, a male resident from the Anesthesiology Department allegedly complained through Midas, an internal anonymous hospital reporting system, that Dr. Johannigman had made a comment that the resident found threatening on May 7.

71. Dr. Edwards went outside of the Midas resolution process to obtain the Anesthesiology resident's complaint.

72. Dr. Edwards then directed Dr. Pritts to tell Dr. Johannigman that he had been removed from all clinical duties at UCMC. Dr. Johannigman's removal was so swift and abrupt that he had to find another surgeon to operate on his patient that same afternoon.

73. Dr. Johannigman explained to Dr. Pritts, Dr. Edwards, Sheila McCormick, Director of HR for UCP, and subsequent investigators, that the male resident had proposed taking an action that could have resulted in complications and possibly the death of the patient, who was in hemorrhagic shock.

74. On June 28, 2018, Dr. Jonathan Moulton, in his capacity as Chief-of-Staff at UCMC, drafted a memo to Dr. Johannigman regarding the Midas complaint.

75. Dr. Moulton wrote, in relevant part,

"We have reviewed the complaint and your explanation and response. Our understanding is that you have confirmed that you said what was alleged or

something like it but that you did not mean it to be literal and following this, you spent 10 minutes with the trainee educating him/her about how to manage low blood pressure in post-op trauma patients appropriately. The UCMC chiefs-of-staff do not believe that you were literally threatening physical harm to a trainee After careful consideration, the chiefs believe that the most appropriate response is a formal personal communication urging you to consider carefully how your language and manner may be perceived by others This letter does not affect your current privileges at UCMC in any way and you remain a member of the medical staff in good standing. The chiefs-of-staff do not believe that a formal MEC investigation or action is necessary.”

76. Dr. Johannigman immediately sent copies of Dr. Moulton’s memo to Drs. Edwards and Pritts. He did not receive a response from either.

77. In defiance of Dr. Moulton’s position on the matter, Dr. Edwards continued to ban Dr. Johannigman from working at UCMC.

78. In defiance of Dr. Moulton’s position on the matter, Ms. McCormick continued to investigate the May 7 incident for months.

79. Ms. McCormick was also responsible for the UCP investigations of Drs. Edwards and Davis, though neither were suspended or otherwise prevented from performing any of their job duties at UCMC or UC during their investigations.

80. After the May 7 incident, Dr. Edwards required Dr. Johannigman to undergo a formal forensic psychological examination, conducted by a forensic psychologist, to determine whether he was a threat to residents.

81. Defendants did not require Drs. Edwards or Davis to undergo psychological examinations to ensure that they could safely work with staff.

82. Dr. Johannigman complied fully, submitting himself to three video-recorded sessions in July 2018, as well as hours of psychological testing and personality profiling.

83. Since then, Dr. Johannigman has voluntarily and regularly seen a therapist.

84. After the examination, the forensic psychologist submitted a statement to Defendants in which he opined that Dr. Johannigman was fit to return to work fully,

including to work with residents. The psychologist concluded, “It is my opinion that Dr. Johannigman can safely and properly perform his job responsibilities . . . [and] that Dr. Johannigman has the ability and capacity to comport his behavior to acceptable professional standards. . . . Dr. Johannigman has the ability to meet these expectations and should be expected to do so fully.”

85. The psychologist met with Dean Filak late in the summer of 2018 to convey the same message.

86. Defendants ignored the recommendation of the psychologist and continued to disallow Dr. Johannigman from working at UCMC.

87. On November 20, 2018, Defendant UC concluded its Title IX investigations against Drs. Edwards and Davis. The investigator’s report reflected that many employees witnessed and experienced their harassing conduct, though the investigator concluded that there had been no Title IX violation.

88. Upon information and belief, Defendants did not discipline Dr. Davis at all, despite credible accusations of sexual harassment.

89. Dean Filak met with Dr. Johannigman on November 27, 2018, to reiterate that he would remain suspended from UCMC indefinitely. Dr. Alex Lentsch, Senior Associate Dean for Faculty Affairs and Development at UC, was also present.

90. Dr. Johannigman asked to be permitted to work toward a full restoration of his employment. Dean Filak dodged the request and said that they could discuss it “at some future date.”

91. Dean Filak provided Dr. Johannigman with a letter, with the subject “Final warning,” to memorialize the meeting. The letter alluded to prior incidents of misconduct,

but it did not specify what any of them were, or when any of them were supposed to have taken place.

92. Dr. Johannigman has never been disciplined for any other incident in his 25-year career, nor had he received any prior warnings.

93. There were no intervening incidents between the May 7 incident and the “Final Warning” on November 27.

94. In December 2018, Dr. Johannigman obtained the permission of Dean Filak to operate on a complex patient alongside Dr. Andrew Friedrich, the Chair of the Department of Anesthesiology—the same department as the complaining resident. There were no issues.

95. On December 20, 2018, Dr. Johannigman wrote to Heather Cox, Executive Director of HR for UC College of Medicine. He requested to be placed on a performance improvement plan or otherwise monitored so that he could work toward the restoration of his employment. Dr. Johannigman did not hear back for weeks.

96. On January 8, 2019, Dr. Johannigman traveled to San Antonio, Texas, for two weeks to fulfill his Reservist duties at the San Antonio Military Medicine Center.

97. On January 14, 2019, Ms. Cox replied to Dr. Johannigman’s December 20 correspondence. Ms. Cox declined to set forth any avenue for Dr. Johannigman to restore his former employment. She copied and pasted passages from Dean Filak’s letter in which he alluded to other instances of misconduct, but she also did not identify a single incident.

98. Dr. Johannigman replied to Ms. Cox, advising that he was away for two weeks to complete his annual tour of duty.

99. On January 21, 2019, Dr. Johannigman wrote to Dr. Pritts and Dr. Jeffrey Sussman, who had become the Interim Chair of the Department of Surgery. He mentioned

that he was in Texas for on military duty. He requested limited permission to operate at UCMC because he had several patients who required operations that were too complex for the West Chester facility.

100. Neither Dr. Pritts nor Dr. Sussman replied directly to the request.

101. On February 1, 2019, Defendants restricted Dr. Johannigman's job even further: Dr. Sussman informed him that he was no longer permitted to participate in open teaching forums, including daily trauma rounds and weekly teaching conferences.

102. Dr. Johannigman wrote again to Dr. Pritts in February to ask whether there could be a plan for his eventual return to UCMC. Dr. Pritts did not reply.

103. On February 15, 2019, Dr. Sussman handed Dr. Johannigman a letter signed by representatives of all Defendants, including Dr. Evaline Alessandrini (CMO of UC Health), Dr. Myles Pensak (CEO of UCP, Chief of Physician Services for UC Health, and Senior Associate Dean for Clinical Affairs at UC College of Medicine), and Rick Shumway (then the CAO of UCMC).

104. The letter, which was dated February 9, responded to Dr. Johannigman's January 21 request to perform surgical cases at UCMC. Defendants wrote, "After careful consideration of the quality of care required for each patient, as well as a significant risk of compromised safety to patients in creating a resident and fellow free pre-operative system to care for them, it was determined that you may not operate on these patients at UCMC."

105. However, Defendants have not objected to Dr. Johannigman working with residents at the West Chester campus, and have never before raised concerns about his "quality of care" or patient safety.

106. Defendants continue to forbid Dr. Johannigman from interacting with residents and fellows at UCMC, constructively ending his practice at UCMC and his teaching role at the College of Medicine.

107. As a result, Dr. Johannigman has been forced to move what is left of his surgical practice to West Chester, resulting in the loss of many patients.

108. With drastically fewer opportunities to operate, Dr. Johannigman has lost critical surgical skills he has developed over the course of his career.

109. Prior to Defendants' revocation of Dr. Johannigman's clinical duties, he performed approximately ten to twenty surgeries per month.

110. Now, Dr. Johannigman is only permitted to operate three to four times a month on average.

111. Prior to Defendants' revocation of Dr. Johannigman's clinical duties, he typically saw hundreds of patients per month.

112. Now, Dr. Johannigman sees only 15 patients a month.

113. Dr. Johannigman has performed only two trauma operations in the fourteen months since he returned from Afghanistan.

114. Defendants measure clinical productivity in Relative Value Units ("RVUs").

115. In 2016, Dr. Johannigman generated approximately 7000 RVUs.

116. Dr. Johannigman is on track to generate just 1500 RVUs in 2019.

COUNT I
Sex Discrimination - R.C. Ch. 4112
(Against all Defendants)

117. The preceding paragraphs are incorporated herein by reference.

118. After a male resident complained about Dr. Johannigman, Defendants suspended Dr. Johannigman from all clinical duties at UCMC indefinitely, yet after female

employees complained about Drs. Edwards, Davis, and Schrager, Defendants permitted them to remain in their jobs undisturbed.

119. In harshly disciplining Dr. Johannigman for a man's complaint but failing to discipline Drs. Edwards, Davis, and Schrager over women's complaints, Defendants discriminated against and limited the employment opportunities of Dr. Johannigman because of sex, in violation of R.C. 4112.02.

120. Defendants' actions were willful, wanton, malicious, and/or in reckless disregard of Dr. Johannigman's rights.

121. As a result of this discrimination, Dr. Johannigman has suffered damages and is entitled to relief.

COUNT II
Retaliation - R.C. Ch. 4112
(Against all Defendants)

122. The preceding paragraphs are incorporated herein by reference.

123. Dr. Johannigman engaged in activity protected by Ohio Rev. Code § 4112.02(I) by opposing sex discrimination in the workplace, as well as by participating in Defendants' investigation into complaints of sex discrimination made by female employees. His protected activity includes but is not limited to: expressing concerns to Mr. Richards regarding Dr. Edwards' aggressive conduct toward women, encouraging the aggrieved employees to complain, encouraging the employees to escalate their concerns, associating with and advocating for the aggrieved employees, and providing a statement to the Title IX investigator.

124. Defendants retaliated against Dr. Johannigman on the basis of this protected activity by continuing to prevent him from working in any capacity at UCMC.

125. As a result of this retaliatory conduct, Dr. Johannigman has suffered damages and is entitled to relief.

COUNT III
Military status discrimination – Ohio Rev. Code Ch. 4112
(Against all Defendants)

126. The preceding paragraphs are incorporated herein by reference.

127. Defendants discriminated and continues to discriminate against Dr. Johannigman on the basis of his military status by treating him less favorably than similarly situated employees who do not have service duties, requiring him to undergo additional training protocols, subjecting him to a psychological evaluation, and indefinitely removing him from all clinical duties at UCMC without justification, in violation of Ohio Rev. Code § 4112.02.

128. Defendants' conduct is intentional, willful, wanton, malicious, and in reckless disregard for Dr. Johannigman's rights.

129. As a direct and proximate result, Dr. Johannigman has suffered injury and is entitled to immediate injunctive relief.

COUNT IV
Discrimination in violation of USERRA, 38 U.S.C. § 4311
(Against all Defendants)

130. The preceding paragraphs are incorporated herein by reference.

131. Dr. Johannigman is an employee of Defendants as defined by 38 U.S.C. § 4303(3).

132. Defendants UCP and UC are employers of Dr. Johannigman as defined by 38 U.S.C. § 4303(4).

133. Defendant UC Health is also Dr. Johannigman's employer pursuant to 38 U.S.C. § 4303(4) because UC Health has control over his employment opportunities and

because it is an organization to whom Defendants UCP and UC have delegated the performance of certain employment-related responsibilities.

134. By currently serving in the U.S. Army Reserves, Dr. Johannigman performs service in the uniformed services as defined by 38 U.S.C. § 4303(13).

135. Defendants discriminated and continues to discriminate against Dr. Johannigman on the basis of his service in the uniformed services by treating him less favorably than similarly situated employees who do not have service duties, requiring him to undergo additional training protocols, subjecting him to a psychological evaluation, and indefinitely removing him from all clinical duties at UCMC without justification, in violation of 38 U.S.C. § 4311.

136. Defendants' conduct was intentional, willful, wanton, malicious, and in reckless disregard for Dr. Johannigman's rights.

137. As a direct and proximate result, Dr. Johannigman has suffered injury and is entitled to immediate injunctive relief.

COUNT V
Failure to reemploy in violation of USERRA, 38 U.S.C. §§ 4312, 4313
(Against all Defendants)

138. The preceding paragraphs are incorporated herein by reference.

139. Dr. Johannigman complied with the notice requirements of 38 U.S.C. § 4312 by timely informing Drs. Pritts and Edwards in April 2017 of his planned deployment.

140. When Dr. Johannigman returned from his deployment in January 2018, Defendants failed to promptly reemploy him in the position of employment he would have held had his continuous employment not been interrupted by his military service, in violation of 38 U.S.C. § 4313.

141. Defendants' conduct was intentional, willful, wanton, malicious, and in reckless disregard for Dr. Johannigman's rights.

142. As a direct and proximate result, Dr. Johannigman has suffered injury and is entitled to immediate injunctive relief.

COUNT VI
Defamation Per Se
(Against Defendants UC and UCP)

143. The preceding paragraphs are incorporated herein by reference.

144. Defendants UC and UCP and their agents, acting in the scope of employment, published false and malicious statements concerning Dr. Johannigman to third parties.

145. The above-described statements were made without privilege.

146. Defendants knew their injurious statements about Dr. Johannigman were false and/or Defendants recklessly disregarded the truth or falsity of their statements.

147. As a direct and proximate result of the above-described conduct, Dr. Johannigman has and will continue to suffer permanent injury to his professional and personal reputation, both within UC Health hospitals and in the broader medical community, as well as anguish, humiliation, and emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dr. Johannigman demands judgment against Defendants as follows:

- (a) That Defendants be enjoined from its unlawful conduct and that Dr. Johannigman be immediately and fully restored in the full scope of his practice at UCMC and within and the College of Medicine, including his teaching duties, pursuant to 38 U.S.C. § 4323(e);

- (b) That Plaintiff be awarded compensatory damages;
- (c) That Plaintiff be awarded liquidated damages;
- (d) That Plaintiff be awarded reasonable attorneys' fees and costs;
- (e) That Plaintiff be awarded pre- and post-judgment interest;
- (f) That Plaintiff be compensated for the adverse tax consequences of receiving a lump sum award rather than his compensation over several, separate tax years; and
- (g) That Plaintiff be awarded all other legal and equitable relief to which he may be entitled.

Respectfully submitted,

/s/ Elizabeth Asbury Newman

Randolph H. Freking (009158)

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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

/s/ Elizabeth Asbury Newman